

Customer Terms

Last updated 17 April 2023

Part A – Introduction

1 **BigPurplePhone[®]**

A reference to 'BigPurplePhone[®]' or 'we' means Henderson and Associates Pty Ltd trading as BigPurplePhone[®] (ABN 16 627 643 387). BigPurplePhone[®] provides Services especially designed for seniors who struggle with using their mobile telephones. It has big buttons, big text, an SOS emergency button, s provides security regarding scam calls and spam from messages and a social app for family and friends to share and connect with their loved seniors with the **Family&Friends** version.

The BigPurplePhone[®] LibbsyOS[™] application is also part of the provision of the Equipment,

There may be other provisions for other infrastructure to enable operation and features of the BigPurplePhone.

2 **About this document**

These terms and conditions (the 'Customer Terms') apply to all Services provided by us to you by agreement between us or, failing agreement, under section 479 of the Telecommunications Act. You agree to the Customer Terms by clicking "I accept" or "I agree" or something similar at the time of you submitting an order via our website at www.bigpurplephone.com.au, by instructing us to provide a Service or by making a payment to us.

3 **Telecommunications Consumer Protections ('TCP') Code**

The 'TCP Code' applies to the Customer Terms and where the Customer Terms are inconsistent with the TCP, the TCP will prevail.

Part B – Order Confirmations

4 **Your Order Confirmation**

We supply Service under a 'Order Confirmation' or 'Contract' that includes:

- (a) the General Terms in Part C, and.
- (b) any Service Terms for that Service.

5 **The Term of Your Contract**

The Order Confirmation will continue on a month-to-month basis until it is terminated in accordance with these Customer Terms.

6 **Fair Use Policies**

- (a) We may publish Fair Use Policies for a Service.
- (b) A Fair Use Policy will be directed against extreme, abusive, antisocial, illegal and / or highly unreasonable use of a Service.
- (c) You must comply with an applicable Fair Use Policy.

7 Operational Directions

- (a) Acting reasonably, we may give Operational Directions about a Service.
- (b) Operational Directions will be directed to the safety, security or reliability of Facilities, compliance with Laws or dealing with an emergency. We will only give an Operational Direction as and when reasonably necessary.
- (c) You must comply with an applicable Operational Direction.

Part C – General Terms

8 The Services

- (a) We will provide to you a non-exclusive, non-transferable, licence for the Services and LibbsyOS™, subject to the terms of your Order Confirmation.
- (b) We may provide the Services using such facilities and such Carrier as we choose from time to time.
- (c) We may provide Service using BigPurplePhone® Facilities and / or third-party Partner Facilities, as we decide from time to time. Together, we call those Facilities the 'Network'.

9 Monthly Plans

For a Prepaid Plan:

- (a) The upfront establishment fee is non-refundable as the establishment fee accounts for the purchase of the Equipment, installation of the LibbsyOS™ and the customisation of the Equipment in accordance with your Prepaid Plan and your Order Confirmation.
- (b) Prepayments are not redeemable for cash or other credit.
- (c) Your Prepaid Plan is charged on a monthly basis, in advance, and any Prepaid Entitlements that are not used during any given month, expire without refund.
- (d) You may cancel your Prepaid Plan at any time. When you cancel your Prepaid Plan or breach these Customer Terms, we will cease providing the Service and we will disable LibbsyOS™ from the Equipment. We are not responsible for the consequences of the Service not operating, or LibbsyOS™ ceasing to perform.

10 Payment for third party services

Using a Service may depend on you having goods or services supplied by third parties. For instance, in order to use an email-to-SMS Service, you must have an internet connection. You are solely responsible for the costs of all third-party goods and services you acquire.

11 Use of Service by others

- (a) You must not share, resell or resupply a Service for remuneration or reward.
- (b) A person who makes use of a Service with your consent or from your premises or using your equipment or log-in password is your 'End User'.
- (c) The acts and omissions of your End Users with respect to a Service are deemed to be your acts and omissions.
- (d) You must ensure that your End Users do not do (or omit to do) anything that would breach your Order Confirmation if done (or not done) by you.

12 Partner Requirements – General

- (a) Telecommunications Services, including many of our Services, are commonly provided by means of Partner Facilities, provided by third party Providers.
- (b) A Partner may only permit us to provide Service to you subject to certain requirements (**Partner Requirements**).
- (c) You must comply with any applicable Partner Requirements we notify.
- (d) Where a Partner Requirement states that a Partner has a certain right or power:
 - (i) the Partner itself may exercise that right or power; or
 - (ii) we may exercise the right or power on behalf of the Partner.

13 Using a Service

- (a) When using a Service, you must comply with:
 - (i) your Order Confirmation; and
 - (ii) any and all applicable laws, including rules of common law and equity, statutes, regulations, by-laws, ordinances, mandatory codes of conduct, writs, orders, injunctions, judgments, requirements or directions of any Regulator, including but not limited to the *Spam Act 2003* (Cth), *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) and *Privacy Act 1988* (Cth) ('Laws').
- (b) You must not use a Service, and you must ensure that your End Users do not use a Service:
 - (i) in breach of any Law;
 - (ii) to breach the rights of any person;
 - (iii) to send Restricted Content;
 - (iv) for publishing, reproducing or advertising any message, information, symbol or other communication which is offensive or abusive or of an indecent, obscene or menacing character or for the purpose of causing annoyance, inconvenience or needless anxiety to any person, or for any unlawful purpose;
 - (v) to defame any person;
 - (vi) to copy, download, supply to anyone else or communicate to the public copyright material without permission;
 - (vii) to create, transmit or communicate communications which are defamatory, obscene, pornographic, discriminatory, offensive, in breach of confidence, illegal or which bring us or any of our Partners into disrepute;
 - (viii) to host or transmit content which contains viruses or other harmful code or data designed to interrupt, damage, destroy or limit the functionality of any software, hardware or computer or communications equipment;
 - (ix) to send, allow to be sent, or assist in the sending of Spam, to use or distribute email harvesting software, or otherwise breach the *Spam Act 2003* (Cth);
 - (x) in a way that is misleading or deceptive;
 - (xi) in a way that results, or could result, in damage to property or injury to any person; or
 - (xii) in any way that damages or interferes with our Services to other customers, our Partners or any Facilities or exposes us to liability.
- (c) You are solely responsible for all acts or omissions that occur under your Account including any password

provided to you by us, and the content of any Messages transmitted through the Service. You acknowledge and agree that any Messages sent using your Account are deemed to have been sent and/or authorised by you.

14 Telephone numbers

- (a) In connection with a Service, you may be allocated with telephone numbers.
- (b) We must comply with Telecommunications Numbering Plan which sets out rules for issuing, transferring and changing telephone numbers.
- (c) You have no claim against us arising from anything we do in compliance with the Numbering Plan, including changing or withdrawing a previously allocated number.
- (d) You must not knowingly and deliberately:
 - (i) do anything that causes us to breach the Numbering Plan, or which makes it more difficult for us to comply with it, or
 - (ii) relocate, reassign or transfer the number for any Service except in accordance with our published procedures, or otherwise as the Law permits.
- (e) You do not own any number allocated to you, and (except where Law permits you to transfer your telephone service and its number to another service provider) you have no right to retain a particular number when your Order Confirmation ends.

15 Supplied Equipment

- (a) This clause applies to the Equipment we supply to you.
- (b) You assume risk in Equipment upon delivery.
- (c) We or our Partners or other third parties retain title to Equipment:
 - (i) for Equipment rented or loaned to you – at all times.
 - (ii) for any other Equipment – until full payment has been made (as may be applicable under the terms of your Plan).
- (d) While we or our Partners retain title to Equipment, you hold it in a fiduciary capacity as bailee for us.
- (e) We or our Partners retain all intellectual property rights in any software, manuals or user documentation supplied with Equipment, including LibbsyOS™. We grant you a licence to use LibbsyOS™ so long as you are on a Prepaid Plan.
- (f) If you use in connection with a Service, any Equipment we have not approved or provided:
 - (i) it must comply with all applicable technical and interconnection standards and requirements, including those set by its supplier or the manufacturer.
 - (ii) you are responsible for ascertaining what those technical and interconnection standards and requirements are, since we will not be familiar with the Equipment; and
 - (iii) we will not be liable to you for any losses or expenses you incur in relation to your use of the Equipment, except to any extent we cause or contribute to it by:
 - (A) our negligence, or
 - (B) our breach of the guarantees under the Australian Consumer Law.

16 Substituted Equipment

- (a) On occasions, stock of advertised Equipment may become unexpectedly unavailable. In that event we may supply substitute Equipment that is substantially equivalent to the original Equipment.

- (b) On occasions, advertised Equipment may not be technically suitable for your situation. In that event we may supply substitute or modified Equipment that is more suitable and will give you prior notice of such substitution.

17 Delivery of Equipment

- (a) If you instruct us to deliver the Equipment to you, we will try to deliver Equipment to you on the delivery date ('Delivery Date') and at the address ('Site') instructed by you during normal business hours in that area.
- (b) Variations at your request to Delivery Date or Site:
 - (i) are at our discretion; and
 - (ii) may be subject to conditions, including extra Charges.

18 Additional Equipment services

- (a) You may ask us to supply additional services in relation to Equipment including without limitation, e.g., repairs.
- (b) If we or our partners agree to provide additional services, we will charge on a time and materials basis at our standard rates at the time.

19 Lost, stolen and damaged Equipment

- (a) You are responsible for any lost, stolen and damaged Equipment owned by us, except if it is caused by us or our personnel.
- (b) You must pay for Equipment that is lost, stolen or damaged, except if it is caused by us or our personnel.

20 Return of Equipment

On the termination of your Order Confirmation for any reason, you must immediately return all our Equipment. If you fail to return the Equipment, you may be liable in accordance with clause 37.

21 Maintenance and faults

21.1 Maintenance

From time to time, the Network and LibbsyOS™ requires maintenance that may interfere with your Service. We will provide you with notice of any scheduled maintenance where reasonably possible.

21.2 Reporting faults

- (a) You may report faults in relation to a Service, the Network, or LibbsyOS™ by contacting us during our normal operating hours. This could be via phone, email or our website enquiry form.
- (b) Before reporting a fault, you must take all reasonable steps to ensure that the fault is not caused by equipment which is not part of the Network.
- (c) You must not report a fault directly to one of our Partners unless we ask you to do so.
- (d) If you report a fault that turns out to be a 'false alarm', or not to relate to the Network, we may make a reasonable charge for our effort and expenses in responding to your report.

21.3 Repairing faults

- (a) We will use reasonable efforts to repair faults in BigPurplePhone® Facilities within a reasonable period.
- (b) We will use reasonable efforts to have our Partners repair faults in Partner Facilities within a reasonable period.

- (c) You are responsible for maintaining and repairing your own Equipment (except where we supplied it and you have warranty rights in relation to a fault).

21.4 Disclosure in respect of repairs

- (a) If we accept a warranty claim from you and arrange for the repair of your Equipment, you acknowledge and agree that:
 - (i) if your Equipment is capable of retaining user generated data (for example, stored messages, emails, contact lists, phone numbers, software and applications etc), the repair of the Equipment may result in the loss or data; and
 - (ii) Equipment presented for repair may be replaced by refurbished Equipment of the same type rather than the defective Equipment being replaced.

21.5 Cost of repairs

If you cause a fault or damage to the Network, we may charge you the reasonable cost of repairing it.

22 Charges & payment: Prices

- (a) You agree to pay our Charges in accordance with the terms of your Order Confirmation.
- (b) Our current prices at any time are referred to as our 'Price List' or 'Rate Sheet'.
- (c) If the price for a Service is not listed in our Price List, for example the price for international SMS, we may charge you a fee equal to the cost to us of providing that service plus a reasonable margin.
- (d) You warrant that you will use the Messaging Services exclusively for the sending of Standard Rate Messages containing Unrestricted Content to End Users and, where the Service supports it, receiving messages from End Users. We may make an extra Charge if you send any Messages that are not Standard Rate Messages, equal to the amount charged to us by the Carrier plus a reasonable margin.
- (e) Any failure by a Carrier to deliver a message to the intended recipient is beyond our control and you will not hold us liable in respect of any such failure.

23 Varying Charges

We may vary the Charges or add new Charges from time to time in accordance with clause 48.

24 Out-of-pocket expenses

- (a) We may notify you that, in order to supply a Service, we need to incur some out-of pocket expense that is not included in other Charges. In that case we will not supply that Service unless you make satisfactory arrangements to pay or reimburse that expense.
- (b) We may notify you that a Partner may charge us if you report a fault and there was no such fault, or the fault lies with equipment for which the Partner is not responsible, or if you contact the Partner directly. You must pay or reimburse all such amounts.

25 When you must pay

- (a) Where a direct debit or credit card arrangement applies, we may debit any Charge when it is billed or billable.
- (b) If any bill is overdue for payment, you must pay that bill and any other bill immediately.
- (c) In any other case, all bills must be paid before the product is shipped or service activated unless a different timeframe is stated in your Plan or Order Confirmation.

26 Late payment

- (a) If a bill is not paid on time:
 - (i) you are in breach of your Order Confirmation, and/or
 - (ii) the service will be immediately discontinued until such times as all outstanding bills have been paid and the next month in advance has been paid as per any other normal prepaid telecommunications service.
 - (iii) we may also charge:
 - (A) interest at 1.5% a month from the bill date until it is paid in full, or
 - (B) a reasonable late fee, and
 - (C) any collection fees and expenses that we incur.
- (b) If any payment you make is dishonoured, we may charge you a reasonable payment dishonour fee and recover from you any fees charged by our bank which result from the dishonoured payment.

27 Billing disputes

- (a) Our records of what you owe us are deemed to be right unless you show them to be wrong.
- (b) If you dispute a bill, you must pay it on time. We shall credit you if it is later determined that you are entitled to a credit.
- (c) You may not raise a billing dispute more than 12 months after a bill is issued, and we will not pay any refund or give any credit in respect of a period prior to that.

28 Billing for unauthorised use of your account

You are responsible for, and must pay for, all use of your Service except for unauthorised use that results from our negligence or breach of guarantees under the Australian Consumer Law.

29 GST

- (a) In this clause, an expression within a pair of asterisks means the same thing as in the GST Act.
- (b) Our prices are taken to be GST inclusive unless they are expressed to be 'GST exclusive', '+ GST' or similar.
- (c) If these terms require you to pay, reimburse or contribute to an amount paid or payable by us in respect of an **acquisition** of a **taxable supply** from a third party, the amount you must pay, reimburse or contribute will be the value of the **acquisition** by us less any **input tax credit** to which we are entitled plus, if our recovery from you is a **taxable supply**, any GST payable under this clause.
- (d) We may recover any GST payable under this clause in the same manner as our Charges.

30 Confidentiality

- (a) Each party (Recipient) undertakes that, in respect of Confidential Information disclosed to the Recipient by the other party (Disclosing Party), it will not disclose Confidential Information except:
 - (i) for the purpose for which the Confidential Information was disclosed to the Recipient under the terms of the Order Confirmation;
 - (ii) to those employees, officers and agents of the Recipient who need to know the information for the purposes of the Order Confirmation, if that person undertakes to keep confidential the Confidential Information;
 - (iii) to professional advisers and consultants of the Recipient whose duties in relation to the Recipient

require that the Confidential Information be disclosed to them;

- (iv) with the prior written approval of the Disclosing Party; or
 - (v) as otherwise required by law to disclose such information.
- (b) The parties acknowledge that monetary damages alone would not be adequate compensation for a breach of the obligations of confidentiality under these Customer Terms, and a Disclosing Party is entitled to seek an injunction from a Court of competent jurisdiction on a breach or threatened breach of this clause.
- (c) Despite anything else contained in these Customer Terms and in particular in this clause 21, we retain the unconditional and irrevocable right to disclose your identity and address and those of any of your Staff or End Users in the event of any complaint, query or request received from any regulatory or Government body or Carrier, in connection with these Customer Terms.
- (d) Nothing in this clause 30 prevents us from naming you as a customer and user of our Services in our marketing materials.

31 Intellectual Property

- (a) The parties agree that other than as provided in this clause 31, nothing in the Order Confirmation transfers ownership in, or otherwise grants any rights in, any Intellectual Property Rights of a party.
- (b) If a party provides any material to the other party that contains any Intellectual Property Rights which were developed by or on behalf of, or licensed to, the first party independently of the Order Confirmation (Pre-Existing Material), then the first party grants to the other party a non-transferable, non-exclusive, royalty-free licence to use, during the term of the Order Confirmation, the Pre-Existing Material solely for the purpose of using or supplying the Services under the Order Confirmation or otherwise as required by Law.

32 Privacy

- (a) If a party is provided with, or has access to, Personal Information in connection with the Services, it must comply with the Privacy Act and any other applicable law in respect of that Personal Information, whether or not it is an organisation bound to comply with the provisions of the Privacy Act. Details of our Privacy Policy can be found on our website.
- (b) You acknowledge and agree that where you authorise or require us to collect or otherwise deal with Personal Information in your name or on your behalf in connection with providing the Services, that we do so as your agent.
- (c) You warrant and represent that:
- (i) End Users to whom you send Messages have consented or otherwise opted-in to the receipt of such Messages and the collection of Personal Information as required by the Spam Act or any applicable Law or regulation; and
 - (ii) you have provided notice to End Users that we will have access to their Personal Information for the purposes of us providing the Services to you and that where our access to Personal Information on your behalf requires the consent of End Users, you have and will obtain this and provide us with evidence on request.
- (d) You acknowledge and agree that except as may be required by the Order Confirmation, we are not required to take steps to ensure that any Personal Information collected by you has been collected in accordance with the Privacy Act. Further, you indemnify us for any claim, demand, action, proceeding or legal process (including by way of set off, crossclaim or counterclaim) by a third party that it has suffered Loss as a result of a breach of the Privacy Act.
- (e) As part of the LibbsyOS™, we may disclose your Personal Information to assist in:
- (i) emergency services, including where we reasonably believe disclosure of your Personal Information

- is reasonably necessary to assist with a medical emergency to provide location information;
- (ii) law enforcement agencies and Government agencies, including for the enforcement of criminal and other laws; and
 - (iii) the operator of the Integrated Public Number Database (IPND) (an industry-wide data base of all telephone numbers and customer details).

33 Statutory Guarantees

You have the benefit of the guarantees in the Australian Consumer Law but our liability for breach of those guarantees is limited to supplying the services again or paying the cost of having the services supplied again.

34 Personal injury or death

To the extent that our negligence causes personal injury or death, we accept liability on normal principles of law.

35 Exclusion of implied terms and limitation of liability

- (a) You agree and acknowledge that:
 - (i) any representation, warranty, condition or undertaking that would be implied in your Order Confirmation by legislation, common law, equity, trade, custom or usage or otherwise is excluded from your Order Confirmation to the fullest extent permitted by law; and
 - (ii) we do not warrant or represent the performance, accuracy, reliability or continued availability of the Services or Facilities or that the Services or Facilities will operate free from faults, errors or interruptions.
- (b) We are never liable to you for:
 - (i) economic loss;
 - (ii) business interruption;
 - (iii) loss of revenue, profits, actual or potential business opportunities or contracts;
 - (iv) anticipated savings;
 - (v) loss of profits;
 - (vi) loss of data;
 - (vii) indirect or consequential loss;
 - (viii) an act or omission by a party for whom we are not responsible in law;
 - (ix) a fault in or failure of a Facility we do not control or operate;
 - (x) any Loss arising from circumstances beyond our reasonable control; or
 - (xi) our failure to continue to provide the Services to you for any reason whatsoever.
- (c) Otherwise, to the maximum extent permitted by law, our maximum aggregate liability to you under, in connection with or arising out of your Order Confirmation or our Service to you (whether pleaded in contract, tort, breach of statutory duty or on any other basis, whether arising from acts or omissions, and whether in relation to damage or loss the risk of which we were or should have been aware) is limited to the aggregate Charges you actually paid to us in respect of the first three months of your Order Confirmation.

36 Liability of our Partners

You release our Partners from any liability to you, whether in contract, tort (including negligence) or otherwise, in relation to any Service or any delay in providing or any failure to provide a Service to you.

37 Your liability to us – General

- (a) You must pay us all Charges and other amounts due under your Order Confirmation.
- (b) You must pay us the fair value of any Equipment that you fail to return to us when required.
- (c) You must pay us fair compensation for any damage to Equipment you return to us. Fair wear and tear does not count as damage.
- (d) To the maximum extent permitted by law, you must indemnify us for any loss or damage we suffer as a result of or in connection with:
 - (i) your breach of your Order Confirmation;
 - (ii) all content of a message you sent or received on your Account;
 - (iii) any wilful or negligent act or omission by you, your employees, agents or contractors;
 - (iv) your use of a Service or Equipment; or
 - (v) any claim made against us by an End User or a third party arising out of or in relation to your use of Services or Equipment;
 - (vi) your use of the Service in a way that breaches any Law or infringes the rights of any third party; and
 - (vii) acts or omissions of End Users.
- (e) Your obligations under this clause survive termination of your Order Confirmation.

38 Your liability to us – legal requests, etc

- (a) This clause applies where we reasonably incur expense as a result of or in connection with:
 - (i) a police request for information or evidence in relation to you or your use of a Service; or
 - (ii) a Court or other competent authority's direction for provision of information or evidence in relation to you or your use of a Service; or
 - (iii) a demand from a legal practitioner for information or evidence in relation to you or your use of a Service.
- (b) You must reimburse our expenses on request as a result of any expense in clause 38.
- (c) Your obligations under this clause survive termination of your Order Confirmation.

39 Your liability to us – (alleged) illegal use, etc

- (a) This clause applies where:
 - (i) your Service is actually or allegedly used in a way that breaches any law or infringes the rights of any third party; and
 - (ii) we suffer loss or reasonably incur expense as a result.
- (b) You must make good our loss and reimburse our expenses on request.
- (c) Your obligations under this clause survive termination of your Order Confirmation.

40 Your cooperation and reporting obligations

- (a) You must give us all reasonable cooperation that we require in order to provide a Service to you, and fixing any problems that arise, and resolving any disputes that may arise or complaints that you may have.
- (b) You must provide us with the current address of the location of the BigPurplePhone and update us if this changes.

- (c) You acknowledge that, where a Service is a carriage service within the meaning of the Telecommunications Act, we or a Partner may be required:
 - (i) to intercept communications over the Service, and
 - (ii) monitor usage of the Service and communications over it.
- (d) You must, at any time and upon our request, provide us with a report certifying that you are in compliant with all Laws and furnish said report to within 14 days of our request.
- (e) If your Service is actually or allegedly used in a way that breaches any Laws or infringes the rights of any third party, you must provide us with the content of the message in question within 7 days of our request.

41 Complaints

- (a) If you have any complaints in connection with the Service (including complaints about your invoice), you should contact us first to resolve the complaint via the contact details available on our website or your bill.
- (b) We will handle your complaint in accordance with our complaint's procedure. Information on our complaints procedure may be obtained by contacting us.
- (c) You are also entitled to make a complaint to the Telecommunications Industry Ombudsman and possibly to the Consumer Affairs office (however described) in your state. We ask that you notify us before you do so, so that we have the opportunity to try to resolve your complaint at that stage.
- (d) We may bill you a reasonable complaint handling Charge.

42 Termination & suspension by us

We may, at any time, terminate a Contract, or suspend or limit Service if, in relation to that or any other Contract or Service:

- (a) you fail to pay us any money that is due,
- (b) you threaten not to pay us money that you owe us, or will owe us in the future,
- (c) you cause to be reversed any direct debit or credit card payment to us (except with our prior written agreement),
- (d) we have a reasonable belief that we are unlikely to receive or retain payments for amounts due and payable by you under the Contract,
- (e) you are in material breach of your Order Confirmation,
- (f) you become insolvent, or subject to a winding-up order or similar insolvency event,
- (g) we reasonably consider that it is desirable to do so to facilitate Network maintenance or to protect the Network from harm,
- (h) it becomes technically infeasible for us to continue Service,
- (i) you use a Service in a way that places unreasonable demands on our Network,
- (j) we are unable to obtain access to your Premises as required to provide, maintain or repair the Service,
- (k) there is an emergency that warrants it,
- (l) if there are reasonable grounds for believing:
 - (i) a serious threat or risk exists to the security or integrity of the Network, or
 - (ii) the provision of the Service may cause death, personal injury or damage to property,
- (m) you have told us that you no longer require the Service,
- (n) if we reasonably suspect fraud or attempted fraud involving the Service,

- (o) we become entitled to suspend the Service, and the suspension continues for more than a month,
- (p) you are, or become, a carrier or carriage service provider under the Telecommunications Act (and we did not agree to provide you with Service despite that),
- (q) to comply with legislative or regulatory requirements, a warrant, the order of a court or lawful direction of a competent authority or as otherwise required or authorised by law, or
- (r) in any other circumstances stated elsewhere in our Customer Terms.

43 Early termination by you

- (a) If we agree that you may terminate it early, we may bill you:
 - (i) any applicable amounts under clause 43(b),
 - (ii) a reasonable administration charge,
 - (iii) usage or network access charges incurred up to the date on which the Contract ends, and
 - (iv) any other Charge (including an early termination Charge) that is specified in the Price List.
- (b) Some of our discounts, deferral or waiver of normal equipment or installation costs are given in exchange for a certain minimum or fixed term. If you want to terminate a Contract early (and we agree that you may do so), we may bill you an additional Charge for those items representing their reasonable value pro-rated against the portion of the minimum or fixed term that is to be truncated.

44 Termination by you

You may terminate your Order Confirmation:

- (a) (except during a fixed or minimum term) at any time, on 30 days written notice; or
- (b) by giving us written notice if we breach a term of your Order Confirmation and:
 - (i) the breach is material and we cannot remedy it; or
 - (ii) the breach can be remedied, but we do not remedy it within 30 days of receipt of a written notice from you requiring it to be remedied; or
- (c) by giving us written notice if an Intervening Event occurs and you are unable to use the Service for more than 30 days.

45 Post-termination

If a Contract ends:

- (a) Our obligations to you under that Contract are at an end.
- (b) We may bill you for any Services we have not yet invoiced and all other amounts we are entitled to under the Contract.
- (c) All bills are payable immediately.
- (d) You authorise us to recover any undisputed outstanding Charges and Early Termination Fees from any overpayment you have made, or direct debit them from your credit card or bank account if you normally pay by direct debit.
- (e) You must return to us, promptly, any of our equipment under your control. (If you fail to do so, we may bill you a reasonable Charge for it.)
- (f) Any cause of action that either of us had against the other predating the termination is not affected,
- (g) The limitations of our liability, and our rights of indemnity, under our Customer Terms continue,

- (h) No other Contract is affected unless we also terminate it.
- (i) Finally, we reserve the right to remove all instances of our software and restore the hardware to default factory settings of which you will be responsible for the operation of the device.

46 Suspension of Service

We may suspend Service at any time, without liability and immediately by reasonable notice to you (except in the case of an emergency or your death), if:

- (a) there are problems with the Network, or we or our Partners need to suspend the Services to conduct operational and maintenance work on the Network;
- (b) you fail to pay any amount owing to us in respect of the Service under your Order Confirmation (which is not the subject of a bona fide dispute should we include - which has been communicated to us, it wouldn't be bona fide if they didn't communicate it to us) by the due date, and you fail to pay that amount within the period specified in any subsequent notice we send you;
- (c) you breach a material term of your Order Confirmation, including terms relating to your use of the Service, our Acceptable Use Policy or any Fair Use Policy, and that breach cannot be remedied;
- (d) you breach a material term of your Order Confirmation, including terms relating to your use of the Service, our Acceptable Use Policy or any Fair Use Policy, and that breach can be remedied, but you do not remedy that breach within 30 days of receipt of a notice from us requiring the breach to be remedied;
- (e) you are the subject of an Insolvency Event;
- (f) we reasonably suspect that you, an End User or any person in connection with the Service is fraudulent or where evidence suggests illegal conduct in relation to the Service;
- (g) we reasonably believe that you may be a credit risk in relation to the Service;
- (h) you are a natural person (and not a company) and you die;
- (i) there is an emergency;
- (j) there is a threat or risk to the security of the Service or integrity of the Network;
- (k) the Service may cause death, personal injury or damage to property;
- (l) we are required to do so to comply with any law or direction of any Regulator;
- (m) an Intervening Event occurs; or
- (n) we are otherwise entitled to do so under your Order Confirmation.

47 Charges during a period of suspension

If we suspend Service:

- (a) because of your fault or breach of your Order Confirmation – you remain liable for all Charges payable under your Order Confirmation during the period of suspension;
- (b) otherwise – you are entitled to a pro rata reduction in Charges in respect of the period of suspension.

48 General power to vary your Order Confirmation

We may vary your Order Confirmation from time to time but:

- (a) Variations do not have retrospective effect.
- (b) If a variation could be reasonably expected to adversely affect you, we shall give you reasonable notice, having regard to:
 - (i) the nature of the variation; and

- (ii) the means by which notice is to be provided; and
- (iii) the length of time remaining before the variation is to occur; and
- (iv) any other matter that is reasonably relevant.

49 When variations take effect

Contract variations take effect:

- (a) at the end of any applicable notice period; or
- (b) if no notice period applies, immediately.

50 Acknowledgements

You acknowledge that:

- (a) there has been no reliance by you on our skill or judgement or written or oral representations in deciding whether our Service is fit for a particular purpose or meets particular criteria;
- (b) the internet is not an inherently secure system and you undertake responsibility for the protection of your information and data;
- (c) the internet may contain viruses (including other destructive programs), which may, if not eliminated, destroy parts or all of the data contained within your system, and that we have no control over these viruses; and
- (d) we do not provide any filtering or checking of data to eliminate these viruses, and you agree to provide you own mechanism for checking your system for viruses, and to indemnify us against any damage caused by viruses obtained through the Service.

51 Errors in our documents

- (a) Clerical or computation errors and misprints in any document that we provide to you in connection with your Order Confirmation, including any plan terms, catalogues, price lists, delivery dockets, invoices, statements or credit notes, may be corrected by us reissuing the document or by otherwise giving you notice of the error or misprint with reference to the original document.
- (b) You are not entitled to a reduction or variation in the price of the Services by reason of any such errors or misprints.

52 Carrier or Carriage Service Provider

- (a) You represent that you are not a carrier or a Carriage Service Provider.
- (b) If you do become a Carrier or a Carriage Service Provider, then we or our Partners may immediately cancel the Service and terminate your Order Confirmation by notice to you.

53 Provision of Services by our Partners

- (a) If we terminate an arrangement with a Partner through which we supply the Service to you, you acknowledge that our Partner may arrange to supply you with the Service directly.
- (b) If our rights and obligations under your Order Confirmation are assigned or novated to our Partner in order to supply the Service directly to you, you acknowledge that the rate plan and Charges applicable to the provision of the Service may be altered to the nearest applicable Partner rate plan.

54 Assignment

- (a) We may assign or novate all or part of our rights and obligations under your Order Confirmation to any of our Partners without your consent provided your rights not being adversely affected by such assignment or

novation.

- (b) You cannot assign or novate all or part of your rights and obligations under your Order Confirmation unless we agree in writing.

55 Notices

We may give any written notice to you in connection with, or as required by our Customer Terms, by sending the notice to you via email, or post (as indicated on your Service application) or by otherwise sending an SMS to your mobile device.

56 Governing law

Your Contract is governed by and must be construed in accordance with the laws of New South Wales. You and we submit to the exclusive jurisdiction of the courts of New South Wales and the Commonwealth of Australia, with Sydney as the venue for any dispute.

57 Entire agreement

Your Contract is the entire agreement between you and us regarding its subject matter, and you acknowledge that:

- (a) your Order Confirmation does not include any term, condition, warranty, representation or guarantee that is not expressly set out in it or incorporated by it, other than an Australian Consumer Law Guarantee to the extent it may not lawfully be excluded; and
- (b) you have not relied on any representation that is not expressly set out in your Order Confirmation.

58 Delays

- (a) Time is not of the essence in the performance of our obligations, including the provision of Services, under your Order Confirmation.
- (b) We are not liable to you for any delay in the provision of any Service.
- (c) You may not cancel or amend an order for a Service on the grounds of any delay in providing it.

59 No waiver

A failure, delay, relaxation or indulgence by us in exercising any power or right conferred under your Order Confirmation (such as a right that we have due to your breach of your Order Confirmation) does not operate as a waiver of the power or right.

60 Interpreting your Order Confirmation

- (a) If an expression is defined in the Dictionary in clause 61, that is what it means.
- (b) If an expression is defined in the Dictionary, grammatical derivatives of that expression have a corresponding meaning. (For instance, if 'to colour' means 'to paint red', then 'coloured' means 'painted red'.)
- (c) Expressions like 'includes', 'including', 'e.g.' and 'such as' are not words of limitation. Any examples that follow them are not to be taken as an exhaustive list.
- (d) Headings are only for convenience. They are to be ignored when interpreting our Customer Terms.
- (e) A schedule to a document is part of that document.
- (f) A reference to the singular includes the plural and vice versa.
- (g) Where one thing is said to include one or more other things, it is not limited to those other things.
- (h) There is no significance in the use of gender-specific language.

- (i) A 'person' includes any entity which can sue and be sued.
- (j) A 'person' includes any legal successor to or representative of that person.
- (k) A reference to a law includes any amendment or replacement of that law.
- (l) Anything that is unenforceable must be read down, to the point of severance if necessary.
- (m) Anything we can do, we may do through an appropriately authorised representative.
- (n) Any matter in our discretion is in our absolute and unfettered discretion. TCP Customers and
- (o) A reference to a document includes the document as modified from time to time and any document replacing it.
- (p) If something is to be or may be done on a day that is not a Business Day then it must be done on the next Business Day.
- (q) The word "month" means calendar month and the word "year" means 12 months.
- (r) The words "in writing" include any communication sent by letter, facsimile transmission or email or any other form of communication capable of being read by the recipient.
- (s) A reference to all or any part of a statute, rule, regulation or ordinance (statute) includes that statute as amended, consolidated, re enacted or replaced from time to time.
- (t) Money amounts are stated in Australian currency unless otherwise specified.

61 Dictionary

The expression:	Means:
Account	the Customer's entitlement to Services subject to the Order Confirmation and, where relevant, includes any Service features, associated usernames or passwords
Acceptable Use Policy	an acceptable use policy made under our Customer Terms
Australian Consumer Law	the Australian Consumer Law set out in Schedule 2 of the <i>Competition and Consumer Act 2010</i> (Cth)
Business Day	Monday to Friday excluding statutory holidays in New South Wales
Carriage Service	as in the Telecommunications Act
Carriage Service Provider	as in the Telecommunications Act
Carrier	as in the Telecommunications Act
Charge	a charge applicable under your Order Confirmation
Confidential Information	in relation to each party (for the purposes of this definition, the Discloser): <ul style="list-style-type: none"> (a) all information relating to or used by the Discloser or its Related Body Corporate, including know-how, trade secrets, ideas, marketing strategies and operational information; (b) all information concerning the business affairs (including products, services, customers and suppliers) or property of the

	<p>Discloser or its Related Body Corporate, including any business, property or transaction in which the Discloser or its Related Body Corporate may be or may have been concerned or interested;</p> <p>(c) any other information disclosed by or on behalf of the Discloser or its Related Body Corporate which, by its nature or by the circumstances of its disclosure, is or could reasonably be expected to be regarded as confidential;</p> <p>(d) the terms and the actual existence of your Order Confirmation; and</p> <p>(e) including any such information made available to the Discloser or its Related Body Corporate by any third party, but excluding any information that:</p> <p>(f) is publicly known or becomes publicly known other than by breach of this Contract or any other obligation of confidentiality;</p> <p>(g) is disclosed to the other party without restriction by a third party and without any breach of confidentiality by the third party; or</p> <p>(h) is developed independently by the other party without reliance on any of the Discloser's Confidential Information</p>
BigPurplePhone [®]	as in clause 1
BigPurplePhone [®] Facilities	Facilities that we manage and maintain
Order Confirmation	has the meaning given in clause 4
Customer Terms	as in clause 2
Delivery Date	as in clause 17
End User	as in clause 11(b)
Equipment	a handset, mobile telephone and any other equipment supplied
Facilities	equipment and network infrastructure of all kinds used to provide or in connection with the provision of a Service
Fair Use Policy	as in clause 6
GST	Goods and Services Tax
GST Act	A New Tax System (Goods and Services Tax) Act 1999 (Cth)
Insolvency Event	includes an event where a receiver or receiver and manager is appointed over any of your property or assets, an administrator, liquidator or provisional liquidator is appointed to you, you enter into any arrangement with your creditors, you become unable to pay your debts when they are due, you are wound up or become

	bankrupt, or any other analogous event or circumstance occurs under the laws of any jurisdiction
Intellectual Property Rights	Includes all right, title and interest wherever subsisting (now or in the future) throughout the world, and whether registered or not, in and to: <ul style="list-style-type: none"> (i) copyright, neighbouring rights, moral rights and the protection of databases, circuit layouts, topographies and designs; (j) methods, inventions, patents, utility models, trade secrets, confidential information, technical and product information; and (k) trade-marks, business and company names and get ups, (l) and includes the right to apply for registration, grant or other issuance of the rights described in paragraphs (a), (b) and (c) above and any other rights generally falling within this term
Intervening Event	an event beyond our reasonable control which interferes with and prevents us from providing the Services to you. Such events include any act or omission of our Suppliers, any disruption to our or our Suppliers' networks, infrastructure and equipment, failure of any electrical power supply, changes to any laws or regulations, and acts of God, lightning strikes, earthquakes, floods or other natural disaster
Law	as in clause 13(a)(ii)
Messaging Service	a Telecommunications Service for sending and/or receiving and/or processing Messages
Network	as in clause 8(c)
Numbering Plan	the Telecommunications Numbering Plan
Operational Directions	as in clause 7
Partner	a third party that, under a contract with us, provides (a) access to Facilities they manage or maintain or (b) content or (c) a service – that we resupply to you
Partner Facilities	Facilities that are managed or maintained by a Partner
Partner Requirements	as in clause 12
Personal Information	as defined in the Privacy Act from time to time
Price List	as in clause 22
Privacy Act	Privacy Act 1988 (Cth)
Privacy Policy	our privacy policy found on our website.
Regulator	includes the Australian Communications and Media Authority, the Australian Competition and Consumer Commission, the Telecommunications Industry Ombudsman, Communications

	<p>Alliance Limited and any other relevant government or statutory body or authority Service a service (and includes Equipment) which we provide to you, including but not limited to</p> <ul style="list-style-type: none"> (a) a Standard Rate Messages; (b) a carriage service of a kind specified in the Telecommunications Regulations 2001 (which includes Internet Services); (c) ancillary goods or service of a kind specified in the Telecommunications Regulations 2001
<p>Restricted Content</p>	<p>Content that:</p> <ul style="list-style-type: none"> (a) is likely to be, having regard to the contemporary attitudes of Australian society, offensive to reasonable adults; (b) is likely to be, having regard to Law and the contemporary attitudes of Australian society, unsuitable for minors; (c) promotes, incites or instructs in matters of crime; (d) describes, incites or promotes unlawful sexual activity; (e) promotes or incites violence or hatred against any person or group, or incites racial hatred; (f) causes unnecessary alarm, distress or panic or is menacing in character; (g) contains a computer worm or virus; (h) breaches any Law; (i) is in contravention of any privacy rules; (j) infringes the confidentiality, copyright or other intellectual property rights or any other proprietary interest of any person; (k) is false, misleading or deceptive, or likely to mislead or deceive; (l) is fraudulent or promotes fraudulent activity; (m) provides financial advice to any person; (n) is out of date, having regard to information generally available, subsequently published, or released, or made available; or (o) is for the purpose of providing any warning or notification about a serious risk to the safety of persons or property (for example, emergency services)
<p>Services</p>	<p>a service (including any Equipment) which we provide to you, including but not limited to (a) a carriage service of a kind specified in the Telecommunications Regulations 2001; or (b) ancillary goods or service of a kind specified in the Telecommunications Regulations 2001</p>

Service Terms	terms and conditions that apply to particular Services, usually as set out in a document titled as such
Site	as in clause 17
Spam	an unsolicited commercial electronic message within the meaning of the Spam Act 2003
Staff	any person, whether your employee, contractor or otherwise, who uses your Account
Standard Rate Messages	Messages that are billed by Carriers at standard rates, and in particular are not premium rate Messages, which are billed by Carriers at premium rates
Telecommunications Act	Telecommunications Act 1997 (Cth)
Unrestricted Content	Content that is not Restricted Content